

Message Text

UNCLASSIFIED

PAGE 01 BOGOTA 02685 251821Z

14-10

ACTION L-02

INFO OCT-01 ARA-10 ISO-00 AID-05 CIAE-00 COME-00 EB-07

FRB-01 INR-07 NSAE-00 TRSE-00 XMB-04 OPIC-06 SP-02

CIEP-02 LAB-04 SIL-01 OMB-01 INT-05 OES-05 DODE-00

PM-03 H-02 NSC-05 PA-02 PRS-01 SS-15 USIA-15 STR-04

/110 W

----- 092684

R 242221Z MAR 75

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC 7686

UNCLAS BOGOTA 2685

EO 11652: NA

TAGS: EINV, CO

SUBJ: CALVO CLAUSE AND RELATED PROVISIONS

REF: STATE 24007

1. ARTICLE 12 OF THE POLITICAL CONSTITUTION OF COLOMBIA STATES IN ITS ENTIRELY, "THE CAPACITY, RECOGNITION, AND IN GENERAL THE REGIME FOR COMPANIES AND OTHER JURIDICAL PERSONS WILL BE DETERMINED BY COLOMBIAN LAW". BY DECREE 1900 OF SEPTEMBER 15, 1973, COLOMBIA PROMULGATED THE ANDEAN PACT FOREIGN INVESTMENT CODE (DECISION 24), AS AMENDED, AS COLOMBIAN DOMESTIC LAW. THE VERBATIM TEXT OF ARTICLE 51 OF THE CODE, CONCERNING INVESTMENT DISPUTES, IS INCLUDED IN THE DECREE. THESE TWO PROVISIONS WERE BOTH CITED IN FOREIGN OFFICE NOTE 5009, AUGUST 14, 1974, WHICH CONSIDERS PRECISELY THE TYPE OF QUESTION POSED IN REFTEL. TEXT OF THE NOTE WAS FORWARDED WITH BOGOTA A-165, AUGUST 22, 1974, AND AN INFORMAL TRANSLATION SENT BY BOGOTA 7519 OF THE SAME DATE. ONE ARGUMENT IN THE NOTE INDICATES THAT FOREIGN INVESTORS SHOULD BE LIMITED TO NACIONAL TREATMENT.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 BOGOTA 02685 251821Z

2. ARTICLE 42 OF LAW 110 OF 1912, THE FISCAL CODE, PROVIDES

THAT IN A CONTRACT BETWEEN THE GOC AND A FOREIGN PERSON, THE FOREIGNER MUST RENOUNCE ANY ATTEMPT AT DIPLOMATIC RECOURSE CONCERNING RIHGT(S) AND DUTIES UNDER THE CONTRACT, EXCEPT IN A CASE OF DENIAL OF JUSTICE, AND THERE IS NO DENIAL OF JUSTICE WHEN THE PARTY TO THE CONTRACT HAS HAS ACCESS TO THE RECOURSED AND ACTIONS AVAILABLE UNDER COLOMBIAN LAW BEFORE THE COLOMBIAN JUDICIARY. ARTICLE 182 OF DECREE 1275 OF 1970, DEALING WITH MINING, IS ESSENTIALLY THE SAME PROVISION. ARTICLE 10 OF THE PETROLEUM CODE (DECREE 1056 OF 1953) STATES THAT EXPLORATION AND EXPLOITATION CONTRACTS ARE SUBJECT TO COLOMBIAN LAW, AND COMPANIES WITH HEADQUARTERS OUTSIDE COLOMBIA MUST ESTABLISH AN OFFICE IN BOGOTA WHICH WILL BE CONSIDERED COLOMBIAN "FOR NATIONAL AND INTERNATIONAL PURPOSES", CONCESSION CONTRACTS REGULARLY INCLUDE A CLAUSE RENOUNCING DIPLOMATIC RECOURSE IN TERMS SIMILAR TO THOSE OF THE FISCAL CODE CITED ABOVE.

3. LAW 10 OF 1961 ESTABLISHES THE CURRENT TEXT OF ARTICLE 22 OF THE PETROLEUM CODE, PROVIDING INTER ALIA THAT CONCESSION CONTRACTS CAN BE CONCLUDED WITH PRIVATE COMPANIES IN WHICH FOREIGN GOVERNMENTS HAVE AN INTEREST ONLY IF THE FOREIGN GOVERNMENT RENOUNCES BY TREATY ANY INTERVENTION BASED ON THE CONTRACT OR THE COMPANY EXPRESSLY RENOUNCES IN THE CONTRACT ANY DIPLOMATIC RECOURSE BASED ON THE CONTRACT AND SAID RENUNCIATION IS DULY AUTHORIZED BY THE COMPETENT STATUTORY ORGAN, AND IN ADDITION, THE COMPANY MAKES AN EXPRESS DECLARACION SUBJECTING ITSELF TO THE JURISDICTION OF COLOMBIAN COURT AND TO THE LAWS OF THE COUNTRY. ARTICLE 177 OF DECREE 1275 OF 1970 (SEE ABOVE) ALLOWS MINING BY COMPANIES WITH FOREIGN GOVERMENT INTEREST WHEN THE COMPANIES EXPRESSELY RENOUNCE ALL DIPLOMATIC RECOURSE ARISING FROM EXPLORATION OR EXPLOITATION ACTIVITY, (FOREIGN GOVERNMENTS BY THEMSELVES ARE BARRED FROM BOTH MINING AND PETROLEUM CONCESSIONS.)

4. A RESPECTED COLOMBIAN LAWYER ADVISES THAT HE STUDIED THE QUESTION OF FOREIGN ARBITRATION AGREEMENTS IN CONNECTION WITH HIS REPRESENTATION OF U.S. FIRMS. HE SAYS THERE ARE NO COLOMBIAN LAWS SPECIFICALLY PROHIBITING IT (EXCEPT OF COURSE ARTICLE 51 OF THE ANDEAN CODE) BUT THAT HE CONCLUDED THAT REMOVAL OF INVESTMENT DISPUTES FROM COLOMBIAN JURISDICTION WOULD NOT BE ALLOWED.

VAKY
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 BOGOTA 02685 251821Z

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INVESTMENT LAW, LITIGATION, FOREIGN INVESTMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 24 MAR 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BOGOTA02685
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750104-1007
From: BOGOTA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750323/aaaaauot.tel
Line Count: 107
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 STATE 24007
Review Action: RELEASED, APPROVED
Review Authority: hartledg
Review Comment: n/a
Review Content Flags:
Review Date: 18 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 JUN 2003 by SilvaL0>; APPROVED <26 FEB 2004 by hartledg>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CALVO CLAUSE AND RELATED PROVISIONS
TAGS: EINV, CO, ANCOM
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006